

EXHIBIT 7

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK: PART 48

IN RE: OPIOID LITIGATION

INDEX NO.: 400000/2017

August 19, 2020
Central Islip, New York

MINUTES OF FRYE HEARING
(Testimony of James Rafalski)

B E F O R E: HON. JERRY GARGUILO
Supreme Court Justice

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A Yes.

Q. In your analysis, your computers look to see whether any orders for prescription opioids shipped to certain chain or retail pharmacies exceeded the thresholds set by each of the five flagging methods; is that generally right?

A Yes.

Q. When an order is flagged by one of your flagging methods, all that means is that the order exceeded the threshold set by the method, right?

A Correct.

Q. You're not saying that a flagged order is suspicious, right, sir?

A Correct.

Q. You're not saying that a flagged order should not have been shipped?

A Correct.

Q. You're not saying that order, if it was flagged, you're not saying it was diverted?

A Correct.

Q. Dr. McCann, you are not an expert in suspicious order monitoring, correct?

A Correct.

Q. You didn't review the suspicious order

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monitoring programs for any Defendant in this case,
correct?

A Correct.

Q. And you have no opinion on any
Defendants' suspicious order monitoring system,
correct, sir?

A Correct.

Q. You don't know whether any Defendant has
ever used any of the five flagging methods that you
used? You didn't look at that, right?

A Correct.

Q. You also don't know whether the DEA has
endorsed any of the five flagging methods that you
used, right, sir?

A Correct.

Q. You don't know whether the New York
Bureau of Narcotics Enforcement has endorsed any of
the five flagging methods that you used?

A Correct.

Q. You have no opinion whether any of the
five flagging methods that you used are legally
required, right, sir?

A Correct.

Q. You have no opinion on whether any of

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the five flagging methods you applied are appropriate for identifying suspicious orders, right?

A Correct.

Q. There may be other appropriate methods for flagging the suspicious orders besides the five that you used, isn't that right?

A Yes.

Q. And, in fact, the methods that you applied may not be appropriate, right?

A Correct.

Q. You know that the Plaintiffs have retained a consultant in this case named Jim Rafalski, right, sir?

A Yes.

Q. Did you watch or listen to Mr. Rafalski's testimony on Monday or Tuesday of this week?

A No.

THE COURT: What was the answer?

THE WITNESS: No.

THE COURT: Thank you.

BY MS. SWIFT:

Q. So you're not aware that Mr. Rafalski

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antitrust, the pharmaceuticals. Do you remember that?

A Yes.

Q. You're not aware of any peer reviewed articles on any of the flagging methods that you applied in this case, right, sir?

A Correct.

Q. And you don't have an opinion on whether any of your five flagging methods is appropriate for suspicious order monitoring, right, sir?

A Correct.

Q. You don't have an opinion on whether any of the five flagging methods you used is generally accepted in the industry, correct, sir?

A Correct.

Q. You have no opinion whether there is any consensus in the industry about using any of the five flagging methods that you used, right?

A Yes.

Q. Dr. McCann, now I'd like to ask you some questions about key assumption that you used in applying all five of your methods, okay?

A Yes.

Q. You used the five flagging methods only

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office interacting with any of the Plaintiffs' consultants for purposes of preparing your report, correct?

A I'm sorry, correct.

Q. You never talked to Mr. Rafalski to get an understanding of how the five flagging methods were supposed to be applied?

I can't hear your answer, sir.

A I'm sorry, correct. I may be speaking too quickly as you are finishing your question and it may not be coming through. I apologize.

Q. That's okay. I'll ask it again so we have a clear record.

You never talked to Mr. Rafalski to get an understanding of how the five flagging methods were supposed to be applied, correct?

A Correct.

Q. Mr. Rafalski did not review the computer code written for your five flagging methods, correct, sir?

A I found out one way or another.

Q. I'm going to show you your same transcript from May of 2019.

MR. SHKOLNIK: Which date, please,

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recall, not whether you're truthful or not.
You were placed under oath that day, Doctor?

THE WITNESS: Yes.

THE COURT: Yes?

THE WITNESS: Yes.

THE COURT: Okay. And you answered all
the questions that were put to you as best
you could, correct?

THE WITNESS: Yes.

THE COURT: And the question is, was
that question and answer put to you as a
question form and your answer, correct; is
that accurate?

THE WITNESS: Yes -- well, I don't
remember the question and answer. All I can
do is read the transcript and see it.

Q. Do you take issue with the question and
answer that you see on the screen right now?

A No.

Q. Thank you, sir.

You never asked Mr. Rafalski to check
your work to make sure that you had applied the five
flagging methods the way he intended, correct, sir?

A Correct.

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1 Daubert motions there? I'll blow it up on the
2 screen. Do you see that? It says both Plaintiffs
3 and Defendants move to exclude the expert testimony
4 and other evidence presented by the other party; do
5 you see that?
6

7 A I see it.

8 Q. Now I'm going to show you page 8 of the
9 Freddie Mac opinion.

10 MS. SWIFT: My computer appears to have
11 frozen. If we have Danny Nagretty (phonetic)
12 on the line. Danny, could you pull up X5.8,
13 please.

14 Q. And the part that I'd like to call out
15 is on the left-hand side of the page, it's a
16 paragraph in the middle that says (READING:) After
17 listening to -- if you can call that paragraph out
18 for us Danny. Thank you very much.

19 It reads (READING:) McCann's analysis
20 changed so many times in important ways and was so
21 internally inconsistent that I found it unreliable
22 and unpersuasive.

23 After listening carefully to all of his
24 testimony about his two inconsistent event studies,
25 I could not credit his testimony, and I have serious

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2 reservations about the admissibility of such poorly
3 supported opinions.

4 The McCann being discussed in that
5 paragraph is you, sir, correct?

6 A Correct.

7 MS. SWIFT: You can take that down,
8 Danny. Thanks very much for your help.

9 THE COURT: Miss Swift, how does that
10 translate in the hearing, our hearing?

11 MS. SWIFT: Your Honor, it goes to show
12 that Mr. McCann's methods of analyzing data,
13 large data sets, as he did in this case, have
14 been deemed unreliable by other courts.

15 THE COURT: I noted, I think yesterday
16 or the day before yesterday, I don't mean to
17 be devil's advocate, but I did note that each
18 of you, I think all sides, had submitted, in
19 connection with all these Frye applications,
20 copies of decisions from the MDL Court,
21 particularly from docket -- I think it was
22 docket Number 2494, all right.

23 MS. SWIFT: Yes, your Honor.

24 THE COURT: I have that. And I
25 mentioned it yesterday or the day before --

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the pharmacy counter, correct, sir?

A Correct.

Q. You did not perform any analysis at all of prescriptions filled at any of those pharmacies?

A Correct.

Q. You didn't do any work to examine whether the medications reflected in the flagged orders, whether those medications were dispensed to patients pursuant to lawfully written prescriptions, right?

A Correct.

Q. So you don't know whether any of the flagged orders you identified led to a single prescription that should not have been filled, right?

A Correct.

Q. You also have no opinion that any order that you flagged was diverted for an unlawful use, correct?

A Correct.

Q. You have no opinion that any flagged order was even likely to be diverted, correct, sir?

A Correct.

Q. You have no opinion that any of your

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flagged orders was suspicious in any way, correct?

A Correct.

Q. You have no opinion that any Defendants' failure to comply with any one of your five flagging methods means that Defendants did anything wrong, right?

A I'm sorry, could you ask that again, please.

Q. Sure. You're not offering any opinion that any Defendants' failure to comply with one of your five flagging methods means that Defendants did anything wrong, correct?

A Correct.

Q. You don't even have an opinion that any Defendant actually did fail to comply with your flagging methods, right?

A Correct.

Q. You have no opinion that any Defendant oversupplied opioids?

A I don't have an expert opinion on that.

Q. You're not offering an opinion that any Defendant oversupplied opioids, correct, sir?

A Correct.

Q. You're not offering an opinion that any